MEDIA INITIATIVE for Human Rights

2022

QUASI LEGAL SYSTEM IN THE OCCUPIED TERRITORIES:

Implementation and Adoption of Practices

TABLE OF CONTENTS

3 Abbreviations

4 **INTRODUCTION**
6 Methods
8 International Standards

SECTION 1
9 **Establishment of Control and Formation of a Quasi Legal System**
10 1.1 Response to the Occupation: Relocation of the Public Authorities
11 1.2. In Occupied Donetsk: from the Proclamation of the «Republic» to the «Election»
12 1.3. In Occupied Luhansk: from the «People's Governor» to the «Declaration of Unification»

SECTION 2
13 **Access to the «Justice System» in the ORDLO**
14 2.1. Detention Authorities
15 2.2. No Right to Defense
17 2.3. Public Prosecution

SECTION 3
18 **«Judicial» System**
19 3.1. «Courts»: Before the Quasi Legal System Formed under Occupation
19 3.2. «Judicial» Practice in the Occupied Territories of Donetsk Region
21 3.3. «Judicial» Practice in the Occupied Territories of Luhansk Region
22 3.4. Under the Threat of the Death Penalty
23 3.5. «Judicial Examinations» нBased on Examples from Testimony by Former Hostages

SECTION 4
26 **Newly Occupied Territories and Adoption of Relevant Practices in Them**
27 4.1. Particularities of Russia's Temporary Control over Kharkiv Region
28 4.2. Kherson Region: Detention and Interrogation by Agents of the Federal Security Service
31 4.3. Pseudo-referenda: an Attempt at Establishing Permanent Control

33 **CONCLUSIONS**

34 **ANNEXES**

Authors: Maksym Tymochko, *attorney, partner at Umbrella JSC, analyst with the Media Initiative for Human Rights (MIHR)*

Andriy Yakovlev, *attorney, managing partner at Umbrella JSC, analyst with the MIHR*

Tetiana Katrychenko, *MIHR coordinator*

Abbreviations

ORDLO – transliterated Ukrainian abbreviation designating the occupied districts of Donetsk and Luhansk Regions

«MSS» – so-called «Ministry of State Security»

«LNR» – so-called «Luhansk People's Republic»

«DNR» – so-called «Donetsk People's Republic»

IMG – illegal militia group

PDC – pretrial detention center

SSU – Security Service of Ukraine

AFU – Armed Forces of Ukraine

MIA – Ministry of Internal Affairs

CCU – Criminal Code of Ukraine

OSCE – Organization for Security and Cooperation in Europe

UN – United Nations

URPI – Uniform Register of Pretrial Investigations

RF – Russian Federation

IHL – International Humanitarian Law

IHRL – International Human Rights Law

MIHR – Media Initiative for Human Rights

ICC – International Criminal Court

INTRODUCTION

The armed conflict in the territory of Ukraine has been ongoing for nine years. For nine years, the Crimean Peninsula and the occupied districts of Donetsk and Luhansk Regions (ORDLO) have been under the control of illegal militia groups (IMGs) of the Russian Federation (RF). On February 24, 2022, the Russian army launched an aggressive war against Ukraine in the form of a full-scale invasion, calling it a «special military operation». As a result, the occupation extended to parts of Chernihiv, Kyiv, Sumy, Kharkiv, Kherson, Mykolayiv, and Zaporizhia Regions. New districts of Luhansk and Donetsk Regions also came under Russian control.

The north of Ukraine was liberated in March 2022, almost all of Kharkiv Region – in September, and the right-bank part of Kherson Region – in November. As of the first half of November 2022, four regions—Donetsk, Luhansk, Zaporizhia, and Kherson—largely remain under occupation. Russia commenced an accelerated «legitimization» process in their territories, appointing leaders, busing in Russian staff members, and partly forming so-called «law enforcement agencies». On September 23-27, the Russian authorities staged pseudo-referenda «on the admission of parts of Ukrainian territory into the Russian Federation». The Russian army and intelligence services are simultaneously terrorizing the local population: since the early days of the occupation civilians have been forcibly abducted, and Russia subsequently refused to acknowledge their detention or disclose their fate or whereabouts in order to deprive them of legal protection for long periods of time. There have been widespread abductions of active citizens – representatives of the local authorities, volunteers, journalists and people who opposed the occupation regime by attending rallies in support of a united Ukraine and publishing pro-Ukrainian posts on social media. Once detained, they were treated cruelly, tortured, held in inhumane conditions, particularly in basements, colonies and so-called filtration camps, and were denied the right to a proper treatment, legal protection and fair trial.

RUSSIA HAS BEEN RESORTING TO SUCH PRACTICES IN THE TERRITORY OF UKRAINE SINCE 2014.

After establishing temporary control over parts of Donetsk and Luhansk Regions, the Russian Federation relied on collaborationists to interfere with the operations of legitimate Ukrainian authorities, which were soon forced to discontinue their work under occupation. In the territory of the ORDLO, Russia began changing the Ukrainian law enforcement agencies and judicial system in accordance with Russian laws and those of the former Soviet Union. That is how the so-called people's police, ministry of state security, and the prosecutor general's office came into being. In reality, these quasi law enforcement agencies do not perform their law enforcement functions. Likewise, the quasi courts fail to administer proper justice. Even though over the past eight years under occupation ORDLO quasi courts evolved from «field courts» into district courts, a mi-litary tribunal, a supreme court, and an appeals chamber within the supreme court, the judicial system continues to operate as an element of the executive power. Respect for fundamental freedoms is merely declarative, particularly when it comes to politically-motivated arrests. We are referring to arrests, detention, and «conviction» of Ukrainian citizens on charges of «high treason», «espionage», «terrorism and sabotage» based on suspicions of collaboration with the Ukrainian law enforcement agencies and army.

The system in place in the ORDLO permits arbitrary imprisonment, torture, and subsequent mistreatment of human beings. People detained in the occupied territory remain in custody for years without any progress in prosecution. The MIHR has received testimony about inmates who have spent more than three years in pretrial detention centers without any progress in their cases. In other words, quasi courts in the territory of the ORDLO fail to perform their judicial functions when it comes to determining whether or not criminal charges are justified within a reasonable timeframe. The progress of a case in court depends on the prosecution authorities and not on judicial procedures.

In 2022, Russia started expanding the practices previously used in Donetsk and Luhansk Regions to the newly occupied territories, denying people the right to proper justice and rule of law based on the principles of international human rights law, particularly the Convention for the Protection of Human Rights and Fundamental Freedoms. As a result, residents of Kherson, Kharkiv, and Zaporizhia Regions (much like ORDLO residents since 2014) are unable to access not only the Ukrainian legal system but any other system that would guarantee a fair trial.

Notably, both Ukraine and the international community failed to devote proper attention to such actions on the part of Russia. It was limited to a mere rejection of the results of work of the quasi legal system of the occupation administrations in the ORDLO and proclamations of ORDLO indictments and court verdicts as being invalid; meanwhile, in reality such decisions justified long-term detention of citizens, some of whom are facing the death penalty, which the «law» of these quasi formations imposes «for grave crimes against life as well as specific crimes committed in time of war or under combat conditions». And yet there have been no comprehensive studies of the quasi legal system that took shape under occupation and its impact on the rights of civilians who found themselves in the occupied territories.

The authors of this study set out to identify the regulatory system in place in the occupied territories of Donetsk and Luhansk Regions, determine whether or not it is lawful, whether or not the right of citizens to a fair trial is ensured, and whether it upholds the standards of observance of international human rights law (IHRL) and provisions of international humanitarian law (IHL), which are observed in the territories controlled by the Ukrainian government. The study also sheds light on the practices used by Russia in the territories occupied after February 24.

METHODS

This analytical report focuses on the problems of observance of the rule of law in the Russia-occupied territories of Ukraine: parts of Donetsk, Luhansk, Kherson, and Kharkiv Regions. It analyzes the quasi legal system in the ORDLO, which started forming in 2014, as well as Russia's efforts in the newly occupied territories after November 24, 2022.

In exploring the quasi legal system created by the occupation administrations, we considered **the most glaring human rights violations.**

In preparing the report, the authors pursued a number of objectives, and more specifically to:

01

Analyze the provisions of international law dealing with the observance of the right to a fair trial in its criminal aspect during international and internal armed conflicts.

02

Analyze the laws of Ukraine, the Russian Federation, and the so-called «LNR» and «DNR» relating to the judicial system and status of judges.

03

Explore the formation of the judicial system of the so-called «LNR» and «DNR» for compliance with international standards of fair justice.

04

Monitor «judicial proceedings» initiated in the territory of the ORDLO against civilians and representatives of the Armed Forces of Ukraine[1] (taken prisoner by armed groups of Russia-controlled «DNR» and «LNR») and identify the most common violations of international human rights law and international humanitarian law in the context of Russia's commitments to guarantee the right to a fair trial in the ORDLO territory.

05

Detect facts that would point to the commission of a war crime in the form of willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial (Art. 8 (2) (a) (vi) of the Rome Statute of the ICC) and/or the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable (Art. 8 (2) (c) (iv) of the Rome Statute of the ICC).

ARBITRARY DEPRIVATION OF LIBERTY FOR AN INDETERMINATE PERIOD, DENIAL OF THE RIGHT TO DEFENSE, DENIAL OF THE RIGHT TO EXTERNAL COMMUNICATION, CONDITIONS IN WHICH DETAINEES ARE KEPT IN CUSTODY, AND DENIAL OF THE RIGHT TO A FAIR TRIAL.

[1] The authors interpret the term «Armed Forces of Ukraine» in the broad sense defined by Article 43 of Additional Protocol I to the Geneva Conventions of 1949. According to this article, the armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates. Therefore, this term applies not only to the military personnel of the Armed Forces of Ukraine, but also to servicemen of other regular and irregular armed groups that participated in the Anti-Terrorist Operation or the Operation to repel the armed aggression by the Russian Federation.

The study authors used the following sources of information:

- interviews and written testimony by witnesses (particularly individuals «convicted» by the quasi legal systems);
- photos and videos relating to the examination of «court cases»;
- records of «criminal proceedings» («criminal cases») received from victims and/or «attorneys» of convicts (particularly «verdicts» of the «judicial authorities» operating in the ORDLO territory);
- articles and written documents obtained from public sources;
- reports by international intergovernmental organizations and NGOs;
- national legislation of the Russian Federation and documents of «LNR» and «DNR».

THE STUDY WAS COMPLETED IN THREE STAGES:

1. monitoring and documenting of so-called «judicial proceedings» initiated against civilians and representatives of the Armed Forces of Ukraine in territories over which the Ukrainian government has no control;
2. analysis of the information gathered;
3. assessment of the situation from the perspective of international law.

The monitoring covers the period from April 2014 to February 2022, i.e. the entire period of the armed conflict in the east of Ukraine up to the full-scale invasion by the Russian Federation.

The authors also analyzed public sources dealing with the occupation of parts of Kherson and Kharkiv Regions after February 24, 2022, and collected testimony from people who managed to get liberated from unlawful imprisonment and move to Ukraine-controlled territory.

While working on this study, the authors were aware of its significance for and great interest on the part of the law enforcement agencies of Ukraine and other countries, international organization and judicial institutions, including the International Criminal Court (ICC). This obligated the authors to uphold the high standards applicable to collecting and documenting information about violations to ensure that the evidence or information thus obtained would be proper, credible, and admissible for use by the concerned parties.

While monitoring and documenting violations of the right to a fair trial, the authors were guided, inter alia, by the principles outlined in the Berkeley Protocol on Digital Open Source Investigations. Considering the fact that digital (electronic) information obtained from public resources (including official websites of the occupation authorities) is vulnerable to falsification or destruction, we saved photos, videos, articles, and other online publications while simultaneously archiving the relevant web page using archive.today, perma.cc or other available archivers. Information and evidence from the YouTube video hosting site were downloaded with meta data saved using the citizenevidence.amnestyusa.org website.

INTERNATIONAL STANDARDS

Guarantees of fair justice during an armed conflict are governed by both IHRL and IHL. For this reason, in determining whether or not the newly created quasi legal systems conform to the relevant parameters, the authors considered the relevant provisions of universal and regional-scale international treaties on the protection of human rights, to which the Russian Federation is party, in particular the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Since IHL applies when an armed conflict breaks out, it is worth considering the concept of an armed conflict defined by the **International Criminal Tribunal for the former Yugoslavia in the Dusko Tadic case dated October 2, 1995.** Specifically, an armed conflict takes place when there has been any application of armed force between states.

> *«... On the basis of the foregoing, we find that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there,»*
>
> reads a decision in the Dusko Tadic case.

According to **Articles 33 and 34 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,** «No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. The taking of hostages is prohibited». Therefore, **the taking of civilian hostages constitutes a gross violation of IHL provisions.**

SIMILAR GUARANTEES ARE ALSO PROVIDED BY IHRL. THE CORE PRINCIPLES OF IHRL ARE:

- the right to life, freedom and safety of all people;
- prohibition of torture and cruel treatment;
- prohibition of unsanctioned arrest and detention;
- the right to a fair trial;
- the right to humane treatment of imprisoned individuals;
- the right to protection against unlawful interference with privacy and family life, encroachment against the inviolability of a domicile, and secrecy of correspondence;
- the right to freedom of thought and expression, freedom of assembly and associations.

In light of the fact that the most serious violations of IHL provisions are war crimes that are criminally punishable under both national and international law, in assessing the specific acts committed by officials of the Russian Federation and self-proclaimed «LNR» and «DNR» the study authors considered the relevant provisions of the Criminal Code of Ukraine (Art. 438 «Violations of Laws and Customs of War»), the Rome Statute of the International Criminal Court (Art. 8 «War Crimes»), and the practice of international tribunals.

Considering the implicit nature of the guarantees of the right to a fair trial, which are not expressly provided by the relevant articles of the European Convention on Human Rights and the International Covenant on Civil and Political Rights, and also due to the need to interpret the constituent components of the right to a fair trial, the study authors relied on the practice of the European Court of Human Rights and the United Nations Human Rights Committee in preparing this report.

SECTION 1

ESTABLISHMENT OF CONTROL AND FORMATION OF A QUASI LEGAL SYSTEM

01

1.1. Response to the Occupation: Relocation of the Public Authorities

In the winter of 2014, the Russian Federation unleashed an international armed conflict (an undeclared war against Ukraine): Russia staged a military operation to capture the Crimean Peninsula in November, and anti-governmental protests organized and managed by Moscow began in early March in Donetsk and Luhansk Regions. On March 2, a decision was passed in the building of the Luhansk Regional State Administration occupied by protesters to declare the central executive authorities of Ukraine to be illegitimate and announce a referendum proposing a federalization of Ukraine.

Attacks against people who supported the sovereignty and territorial integrity of Ukraine became more frequent in early April. Talk of creating the so-called Luhansk and Donetsk People's Republics («LNR» and «DNR») began at the same time.

On April 13, 2014, Oleksandr Turchynov, then acting president of Ukraine, announced the start of an anti-terrorist operation in the east of Ukraine, which was eventually (in April 2018) renamed the Joint Forces Operation.

SINCE THE OCCUPATION OF UKRAINE'S TERRITORIES IN 2014, EFFORTS BEGAN TO FORM THE QUASI LEGAL, QUASI EXECUTIVE, AND QUASI-JUDICIAL BRANCHES OF POWER.

The key agencies of the legitimate Ukrainian authorities in the ORDLO territory were stormed, as a result of which all Ukrainian government entities in this territory either stopped working or were no longer subordinated to the Ukrainian authorities. Many courts, prosecutorial authorities, law enforcement agencies, and penitentiary institutions in Donetsk and Luhansk Regions stopped their operations.

On August 12, 2014, the Ukrainian Parliament passed the Law On the Administration of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation. This law empowered presiding judges of higher courts to determine the territorial jurisdiction over cases tried by courts in the temporarily occupied territory. **On September 2, 2014,** presiding judges of three higher courts changed the territorial jurisdiction of 58 courts located in the temporarily occupied territory or in areas where warfare was taking place and authorized the transfer of cases from these courts to designated courts in the territory controlled by Ukraine. However, this never happened in reality: the vehicles transporting the court files were stopped at roadblocks by representatives of illegal militia groups (IMGs) of the «republics», and all of them were seized by these IMGs. Judges who relocated to the territory controlled by Ukraine emphasized that it was challenging to continue trying the cases because the records and archives were lost.[2]

Only some courts in Donetsk and Luhansk Regions were evacuated and resumed operations in other population centers in the territory controlled by the Ukrainian government.

On November 12, 2014, Ukrainian President Petro Poroshenko issued decrees changing the locations of the seven major courts (local commercial, administrative, and appeals courts) relocated to the territory controlled by the Ukrainian authorities. Specifically, the Luhansk District Administrative Court relocated to Severodonetsk, and the Donetsk District Administrative Court moved to Slovyansk, where they resumed their operations.

Several district courts resumed work **in November 2014** when some of the district centers were liberated from occupation.[3] In particular, these were the Volnovakha District Court and the Debaltseve Municipal Court of Donetsk Region. Other courts also resumed their work in due course. For example, the Maryinka District Court of Donetsk Region resumed work **on January 26, 2016** in the town of Kurakhove, Donetsk Region, and the Avdiyivka Municipal Court of Donetsk Region resumed work **on February 22, 2022.**

---

[2] Summary of the expert discussion themed «Criminal Proceedings in Situations When Case Records Remain in the Occupied Territory. Is this Really a Problem?» helsinki.org.ua/articles/pidsumky-ekspertnoi-dyskusii-kryminalne-provadzhennia-koly-materialy-spravy-zalyshylysia-na-tymchasovo-okupovaniy-terytorii-khiba-tse-problema

[3] Directive dated September 2, 2014, No. 27/0/38-14 on the determination of territorial jurisdiction over cases.

1.2. In Occupied Donetsk: from the Proclamation of the «Republic» to the «Election»

On April 7, 2014, after representatives of IMGs stormed administrative buildings, pro-Russian separatists on Donetsk proclaimed the «DNR», adopted a «declaration of sovereignty», and proclaimed an «act of declaration of independent statehood», which had to take effect after getting approved in the referendum.

The so-called «Donetsk republican people's council» was also formed. It began forming the «people's government» **on April 8.** All senior officials of regional law enforcement agencies were dismissed. Denis Pushylin (a citizen of Ukraine, a native of Makiyivka, Donetsk Region) became the «chairman of the interim government». He announced the formation of a people's army «to defend the people and territorial integrity of the republic». Ihor Khakimzyanov (a citizen of Ukraine, a native of Makiyivka, Donetsk Region) was appointed the commander-in-chief of this military formation.

On May 11, 2014, the occupants staged a pseudo-referendum (a poll on the status of Donetsk and Luhansk Regions). According to the «referendum» initiators, the voter turnout in Donetsk Region was 74.87%. The decision was purportedly «supported» by 89.07% of the voters. This «referendum» was held in contravention of the Constitution of Ukraine, with systemic violations of fundamental international principles and procedures governing referenda. Its results were not recognized by the Ukrainian authorities and the international community.

On May 12, 2014 (the day after the «referendum» results were announced), a proclamation was made of a statement appealing for the consideration of admission into the Russian Federation.

On May 14, 2014, the self-proclaimed «supreme council» of the «DNR»[4] adopted the so-called «constitution». It «guaranteed every person the right to judicial protection and provided for the creation of a 'judicial system'.»

Articles 39 to 47 of Chapter 2 «Protection of Human and Civil Rights and Freedoms» cover the general issues of the guarantee of the right to a fair trial. They govern the right to judicial protection, the right to proper jurisdiction, the right to legal assistance, the presumption of innocence, the inadmissibility of prosecution for the same offense multiple times, the prohibition of inadmissible evidence, the guarantee of the right to indemnity for the aggrieved party, the right to appeal a court decision, the right to refrain from testifying against oneself and one's next of kin, and so forth. Human rights must be respected by the judicial system, and equality before the court of law must be ensured (Articles 12, 13).

Article 6 of the document provides for the principle of division of the branches of power into legislative («people council»), executive («government»), and judicial. They are proclaimed independent of one another. The «chairman» of the «DNR» also has powers. The «constitution» prohibits «council» members from simultaneously serving as a judge (Art. 65).

On May 16, 2014, the session of the «supreme council» of the «DNR» approved the chairman of the «council of ministers» – Oleksandr Boroday (a native of Moscow, Russian citizen, political strategist).

In May 2014, they also appointed the so-called «military commandant» of occupied Donetsk – Oleksandr Zakharchenko (a native of Donetsk; during pro-Russian rallies in the east of Ukraine he headed the Donetsk branch of the Kharkiv fight club «Oplot», which was subsequently converted into a battalion; he led the group of people who stormed the building of the Donetsk City Administration). Zakharchenko was eventually appointed «deputy minister of internal affairs». **On August 7, 2014,** he replaced Oleksandr Boroday as chairman of the «council of ministers». After illegitimate elections, it was announced **on November 3, 2014** that «Zakharchenko won» and became «the leader of the DNR».

[4] A body consisting of officials appointed by nobody knows who and under an unknown procedure, who dubbed themselves members of the «legislative body» of the quasi-republic.

1.3. In Occupied Luhansk: from the «People's Governor» to the «Declaration of Unification»

The creation of the «LNR» was proclaimed **on April 27** after the building of the regional headquarters of the Security Service of Ukraine was stormed in Luhansk. Valeriy Bolotov (a Russian citizen, a native of Taganrog, Rostov Region) was elected as «people's governor».

A pseudo-referendum in the occupied territories of Luhansk Region was scheduled for **May 11.** Allegedly, 89.07% of voters cast their votes «in favor».

The results of this referendum, much like the results in Donetsk Region, were not recognized by Ukraine or the international community. However, based on the outcome of this pseudo-re-ferendum the «authorities» of the quasi republic petitioned the Russian Federation to consider the possibility of admitting the «LNR» into the RF. Russia ignored this petition but urged a dialog about changes to the political system of Ukraine. The «DNR» and «LNR» eventually decided to integrate by signing a «declaration of unification».

On May 18, 2014, the so-called «republican assembly of the LNR» adopted the «constitution» that proclaimed the republic to be a sovereign state.

Article 6 of this document provides for the principle of division of the branches of power into legislative («people council»), executive («government»), and judicial. They are proclaimed independent of one another. The «chairman» of the «LNR» also has powers.

The «constitution» does not define any provisions of the «council», «chairman», or «government» that would affect the independence of judges (Articles 59, 69, 77) and also prohibits the members of the «council» and the «chairman» of the «LNR» from simultaneously serving as a judge (Articles 56, 65).

It also partly upholds the principle of checks and balances, since the «supreme court» of the «LNR» can rule the composition of the «council» to be unlawful, which would result in the termination of the powers of the «council» members (Art. 74). The «chairman» of the republic can appeal the resolutions of the «council» in court (Art. 71); the court may find the «chairman» of the «LNR» guilty of a crime, which would result in early termination of the chairman's powers; the «supreme court» can issue an opinion confirming the signs of a felony in the actions of the «LNR» «chairman» (Art. 61).

At the same time, the «constitution» does not contain a vast body of provisions that would regulate the formation of courts, appointment of judges, the principles of administration of justice and guarantee of the principles of immunity and impartiality of judges. Only one article is devoted to this aspect.

Nominations of «supreme court» judges get approved in the plenary session of the «LNR» «people's council» as advised by the «chairman».

On May 21, 2014, the republican assembly of the «LNR» elected Ihor Plotnytskyi (a citizen of Ukraine, who headed the Zarya Battalion terrorist group in April 2014) as «defense minister of the republic». **On August 14, 2014,** «LNR» «chairman» Valeriy Bolotov resigned and announced the appointment of Ihor Plotnytskyi to this «position». On August 20, the latter also became chairman of the so-called «council of ministers» of the «LNR». In early **November 2014**, Plotnytskyi became the leader of the «LNR» after a pseudo-election. He held this position until 2017 when he was replaced by Leonid Pasichnyk.

UNTIL 2022, THE RUSSIAN FEDERATION DID NOT OFFICIALLY RECOGNIZE THE SOVEREIGNTY OF THE «REPUBLICS», BUT STILL PROVIDED MILITARY, ECONOMIC, ADMINISTRATIVE, POLITICAL, AND DIPLOMATIC ASSISTANCE AT AN UNOFFICIAL LEVEL.

SECTION 2

ACCESS TO THE «JUSTICE SYSTEM» IN THE ORDLO

Russia began forming quasi law enforcement agencies in the occupied territories of the ORDLO in 2014. This was done not only to maintain order in the face of rising crime rates, but also to persecute those objecting to the occupation. Ever since Russia's armed aggression against Ukraine began, civilians in territories of Donetsk and Luhansk Regions outside the control of the Ukrainian government have been suffering from persecution; many have been arbitrarily detained by representatives of Russia-controlled illegal militia groups, which is reflected in numerous reports by international human rights organizations, records of international intergovernmental organizations, and MIHR surveys.

The authors of this report focus specifically on politically-motivated detentions and subsequent arrests.

02

2.1. Detention Authorities

On August 8, 2014, the «authorities» in Donetsk issued «Directive» No. 34 *On Urgent Measures to Protect the Population Against Banditry and Other Manifestations of Organized Crime*. Under this document, «the ministry of state security» («MSS») and the «ministry of internal affairs» of the «DNR» are authorized to carry out «preventive detentions» and impose arrests for a term of up to 30 days without serving a notice of suspicion. The same «procedure» (effectively an arbitrary detention mechanism) has been also instituted in Luhansk Region controlled by representatives of illegal militia groups.

According to testimony by civilians, those subjected to **«an administrative arrest»** are held in custody without the right to contact relatives or attorneys, without procedural oversight and monitoring on the part of international human rights organizations. During these 30 days, representatives of IMGs attempt to coerce the detainee into confessing to the «crime» using torture and other forms of physical and psychological violence.

The majority of witnesses of such arrests and those detained in the occupied territories in 2016-2022, who were interviewed by the MIHR, have said that upon getting detained they were not informed about the causes of the detention; without any explanations the people would get handcuffed, have a bag put on their head, put into cars (usually those were unmarked passenger cars), and taken to the detention center.

SUBSEQUENTLY, NO «COURT» ADDRESSED THE MATTER OF THE GROUNDS, TERM, AND LAWFULNESS OF THE ARREST.

So-called operatives and investigators decided the matters of detention, terms and conditions of placement in custody in occupied Donetsk and other occupied population centers of Donetsk Region. According to former civilian hostages, people who detained them could single-handedly make decisions on subsequent placement into custody and its term.

Stanislav Pechonkin, a resident of occupied Horlivka (Donetsk Region), told the MIHR about the circumstances of his arrest. He was detained in 2016 and released in December 2017.

> *«No court hearing on the grounds for the arrest took place. Only after I was taken back to the cell after getting tortured, they had me sign a piece of paper saying that on instruction from the 'prosecutor general's office' I was placed under administrative arrest for 30 days with the possibility of prolongation for another 30 days. At that point they told me they would do anything they want to me during that month,»* he recalls.

During the first weeks, people were usually held in custody at unofficial facilities presumably created by a decision of investigators or heads of detention units – premises of industrial enterprises, police units, basements of residential or office buildings, garages. The premises of the «Insulation» plant in Donetsk is the most notorious illegal detention facility (not adapted or properly equipped for holding people in custody). According to former detainees, their cells had a CCTV system with voice recording functionality. Personal conversations were prohibited. Dire conditions (lack of windows and daylight, lack of amenities – a bucket or barrel instead of a toilet), malnutrition, lack of medical aid, and high humidity were used to enhance the methods of physical and psychological pressure.

The first 30 days of detention was a time of countless interrogations during which several people (including so-called operatives) were present. Some of those people wished to remain anonymous and unidentified, so the detainee was not allowed to remove the bag from the head or they wore balaclavas themselves.

Former hostage Denys Koval has told the MIHR that he was detained in Yasynuvata (Donetsk Region) by representatives of the so-called «MSS» with the aid of an officer who worked as a Ukrainian police operative before the occupation. After becoming a collaborationist of the IMG, he got a promotion to chief of the local criminal detection department. Denys Koval was subjected to the so-called 30-day administrative arrest.

«AT FIRST THEY DETAINED ME FOR A MONTH ONLY TO EXTEND THE TERM SUBSEQUENTLY. THE 'ADMINISTRATIVE ARREST' WAS USED TO EXTRACT A CONFESSION.

They beat a confession out of you by using the directive dated August 8, 2014 as an excuse and conducting so-called operative activities outside the framework of a criminal case,» says Denys Koval, who was held hostage from August 2016 to December 2019.

Inmates also recall that Russian citizens (presumably military) were present during illegal interrogations.

«They hold higher positions compared to those of the ordinary locals. In some cases these people personally admitted to have come from Russia or they could be identified as such based on their marked Russian accent. For instance, Slavik from Yekaterinburg was among those who interrogated me. He is a military man and said that he was overseeing the work of the 'MSS' there. He told me it was nothing personal, just a job,» Halyna Hayova, a nurse and former hostage, told MIHR.

In many cases during interrogations, the investigators presented **a statement with testimony written in advance, which they ordered the person getting interrogated to sign.**

After a person gets detained, the fact of their detention is usually not reported to the next of kin. Families look for missing people on their own. Denys Koval says that for one year after his detention his family knew nothing about his whereabouts.

«Petitions to the so-called authorities proved futile. When contacted by my relatives, the so-called authorities sent a meaningless response without disclosing my actual whereabouts,» he says.

SOMETIMES CIVILIANS (AND EVEN PRISONERS OF WAR) WERE HELD IN CUSTODY UNDER FAKE NAMES, WHICH SIGNIFICANTLY COMPLICATED THE SEARCH.

2.2. No Right to Defense

MIHR findings indicate that principles of the rule of law, lawfulness, independence, confidentiality, and rules of legal ethics are not honored in the occupied territories. The right to defense is exercised merely on paper.

In the occupied districts of Donetsk and Luhansk regions, **there are up to a dozen «attorneys» who were allowed to provide «legal assistance» in the category of cases involving «espionage» or «involvement in a terrorist organization».** There are just a handful of those allowed to represent defendants in politically-motivated cases. Most of them are formerly Ukrainian attorneys who held the relevant certificates issued prior to 2014 and after occupation chose to collaborate with representatives of Russia-controlled occupation administrations, turning into accomplices of crimes committed in the quasi republics.

After the **uniform register of attorneys of the «DNR» was formed in June 2016** (it was in the public domain for some time), it turned out that **317 attorneys on this register held certificates issued in Ukraine.** Among them were two then active members of the Donetsk Region Council of Attorneys – Iryna Markova and Mykola Karakash, as well as Olena Radomska, who got elected as «minister of justice». The name of Olena Shyshkina was on the same list. According to interviews, she is the go-to attorney for politically-motivated cases. Shyshkina got certified and worked as an attorney since 2002. After the start of the occupation, she began collaborating with representatives of IMGs, became the presiding judge of the «people's tribunal» that sentenced a number of Ukrainian officials *in absentia,* particularly Ukraine's fifth president Petro Poroshenko. She also ran for the position of the «republic's» leader after the successful assassination of Oleksandr Zakharchenko.

It is safe to assume that all of these people are complicit in the distortion of criminal cases by abusing the institution of criminal justice with the intention of unlawfully prosecuting Ukrainian servicemen and civilians under the law of the occupation administration.

According to testimony by former hostages, **local attorneys collaborated with the «MSS» and did not provide a proper defense;** on the contrary, they often played into the hand of the prosecution team and the court, behaved like prosecutors, intimidated defendants with a lengthy term of imprisonment, and resorted to threats. The probability of the defendant walking out a free person is next to zero owing to legal assistance from this kind of attorney.

In the «LNR» and «DNR», there is a discernible imbalance in favor of «prosecution» coupled with infringement on the suspect's right to choose an attorney during the pretrial investigation as well as inability to review the case files and prepare the defense. Former civilian hostages point out that upon getting arrested they **were not granted access to an attorney,** and subsequently **they could not freely choose a defender.** Some families tried to hire a putatively independent attorney, but they were not allowed anywhere near the cases. At later stages of so-called investigations (sometimes half a year later), a certain person would appear in the case and claim to be the appointed attorney. Yet this defense attorney never even attempted to help their client.

Former hostage Olha Politova, who was detained on accusations of «sabotage», has told about her first interrogation by the «investigator» without an attorney. She was only later offered to hire and attorney, but a specific one (Serhiy Sukhanov) and not an attorney of her choice.

> *«I wanted to refuse an attorney, but the investigator did not accept my refusal. The 'attorney' did not prepare any procedural documents other than a motion for a change of the precautionary restriction, which was denied».*

The attorney was aloof during the «investigation and judicial examination»: when the judge announced that the court would begin hearing witness testimony, to which the suspect objected, the attorney sided with the judge. When Olha Politova was taken for a lie detector test for 7-8 hours, the attorney was not involved in this process in any way. According to Politova, Sukhanov was present formally, for the sake of appearances, at the few court hearings that he did attend.

> *«I wanted to hire a real attorney, but all the decent ones left Donetsk. Meanwhile, attempts at getting help from the territory controlled by Ukraine failed due to resistance on the part of the DNR 'authorities',»* Olha Politova says.

The wife of hostage Oleksandr Yu. *(the name is concealed for safety reasons, since the man has been in custody since summer 2019)* was recommended to hire a local attorney, who collaborated with the 'MSS'. The family was forced to immediately pay 1,000 dollars for the legal services. However, according to the woman, the attorney did not do anything to provide legal defense for her husband and did not offer any legal assistance.

Maryna Chuykova, who was detained for political reasons and who spent 650 in custody in Donetsk, saw her potential defense attorney for the first time only 30 days after her arrest.

> *«It was Vitaliy Lastovetskyi. When I learned that I would have an attorney, I was happy. I had a glimmer of hope that I would get acquitted. I thought that an attorney would defend my rights, that he would be able to call my children, mother so they would hand over a parcel with essential items: warm clothes and personal hygiene products,»* the woman says, adding: *«The 'investigator' to whom they brought me that day began reading my case, and it was being videotaped. And all of a sudden I heard somebody snoring: it was my 'attorney' who fell asleep. I kicked his foot and said: 'You came to rescue me. You should stand up for me'. And he told me: 'Your charges are such that nobody intended to defend you'. It was impossible to refuse the services of this attorney.»*

«I ASKED TO HAVE MY ATTORNEY, VALERIY AKOPYAN, REPLACED. DID NOT DEFEND ME. ACTED NOT AS AN ATTORNEY BUT AS A PROSECUTOR,»
says Zinayida Maltseva, a former hostage.

Halyna Hayova describes her experience of interaction with attorneys thusly:

> *«The first attorney, Valeriy Vitaliyovych Usatenko, charged me a fee and got transferred to the 'ministry of state security' to work a so-called 'investigator'. He never refunded the money. Another attorney, Olena Shyshkina, who gets recommended to almost every political prisoner, wanted a thousand dollars as her fee. However, during the trial she did*

not say a single word in my defense other than asking the judges to give me the shortest possible sentence. She kept reassuring me all the time: 'You will get exchanged'.»

According to testimony of former hostages, Olena Shyshkina was appointed for many detainees facing political charges. However, during the «court hearing» itself she did not even attempt to defend her clients.

Valentyna Buchok, who faced charges of «espionage» in the occupied territories, says that during her unlawful arrest she wrote dozens of complaints about the actions of «investigators», «prosecutors», «judges», and «attorneys».

«I showed Olena Shyshkina the marks of battery that I sustained in the cell. She made a helpless gesture with her hands as if to say that such was the fate of inmates. I wrote more than 20 complaints to have them rid me of this 'attorney'. But in vain,» the woman says.

Another former hostage, Larysa B., says that lawyers work not as defense attorneys but as assistants of prosecutors.

«Don't worry: you are only 40 years old. You will serve ten years. Life is not over for you. And your child can grow up to be a normal person in a children's home,» the woman heard these words from here «defense attorney».

The majority of those interviewed by the MIHR say that they or their relatives sent petitions and complaints (specifically about their attorneys) to the so-called human rights ombudsperson in Luhansk or Donetsk. For instance, in December 2014 the «people's council» of the «DNR» passed a law on the human rights ombudsperson and appointed Darya Morozova to this position (a citizen of Ukraine; at the start of the occupation of a part of Donetsk Region she headed the «committee on the affairs of refugees and prisoners of war» and attended POW exchange meetings). The charter of the ombudsperson of the «republic» states that this position «is instituted for the purposes of guaranteeing state protection of rights and freedoms of citizens, foreigners, and stateless persons in the territory of the 'DNR', preventing any forms of discrimination with respect to the exercise of a person's rights and freedoms». According to testimony by former hostages interviewed by the MIHR, replies from the so-called ombudsperson were standard: «we will look into it; we will check it», but no steps were taken in reality.

2.3. Public Prosecution

At the stage of their «case» getting referred to «court», the detainees would learn about the existence of a prosecutor.

The majority of «prosecutors» worked in the law enforcement system of Luhansk and Donetsk Regions before the start the armed conflict. But there were also those who worked in the Russian law enforcement before the occupation of the ORDLO.

A case in point is Andrey Kim, a citizen of Russia. According to public sources, before his appointment in the «DNR» Kim resided in Kislovodsk and served at the investigative committee of the prosecutor's office of the Russian Federation. In early 2015, he came to the occupied territories where he worked as chief of investigation supervision department at the «prosecutor general's office» of the «DNR». Kim was appointed «chairman of the supreme court» by an order of September 7, 2018 after the successful assassination of Oleksandr Zakharchenko and the appointment of Denys Pushylin as acting head of the «republic».

Still, the «prosecutors» were predominantly citizens of Ukraine. For example, Vasyl Bayrachnyi. Before the occupation, he worked at the prosecutorial authorities of Donetsk Region. He subsequently got a position with the «prosecutor general's office» of the «DNR». He served as «chief military prosecutor» and then became «deputy prosecutor general». Or consider Ruslan Shaipov. He worked at the prosecutorial authorities of Donetsk Region before 2014. After the occupation, Shaipov broke his oath and switched to law enforcement agencies formed by the terrorist organizations. He is complicit in torture and inhumane treatment, fabrication of criminal cases, and unlawful criminal prosecution of Ukrainian hostages under the law of the occupation administration.

According to former hostages, prosecutors (much like attorneys) did not attend all of the «court hearings». The absence of the prosecution team did not preclude the court from examining the case.

«JUDICIAL» SYSTEM

Russia began forming quasi law enforcement agencies in the occupied territories of the Donbas since 2014. The so-called regulatory framework governing «criminal justice» was drafted in 2014-2015 on the basis of the 1960 Criminal Procedure Code of Ukraine and not the 2012 Criminal Procedure Code of Ukraine. As a result, the language of verdicts in the «LNR» and «DNR» is identical to the language used under the Soviets.

The problem of a staff shortage transpired when the «judicial» system was being formed.

Some of the «judges» currently working in ORDLO «courts» are turncoats who broke their oath by acting in contravention of the Constitution of Ukraine and applicable laws of Ukraine and collaborating with representatives of IMGs. The majority of such judges are named as suspects in criminal cases involving the creation of the terrorist organizations of the «LNR» and «DNR», and some of the cases against them have been already sent to court.

According to testimony of former hostages, a judicial examination in the ORDLO is a show during which «judges» try to abide by formal procedural norms while having no intention whatsoever to examine cases independently and impartially. According to former hostages interviewed by the MIHR, in some cases people would get sentenced in the space of one hearing without any case examination whatsoever.

3.1. «Courts»: Before the Quasi Legal System Formed under Occupation

Before the occupation, courts in Donetsk and Luhansk Regions were part of the general judicial system of the country. There were 63 courts in Donetsk Region, and 35 local trial courts and 4 courts of appeal in Luhansk Region.

In January 2014, there were a total of 1,131 judges in these regions. According to the Higher Judge Qualifying Commission, 329 judges submitted applications requesting transfers from Donetsk and Luhansk Regions, and 308 of them were transferred to the territory controlled by Ukraine.

ON JANUARY 25, 2018, THE HIGHER COUNCIL OF JUSTICE PASSED A RESOLUTION TO LIQUIDATE LOCAL AND APPELLATE COURTS IN DONETSK REGION (31 COURTS) AND LUHANSK REGION (17 COURTS) «DUE TO ANTI-TERRORIST ACTIVITIES IN THE REGION».

3.2. «Judicial» Practice in the Occupied Territories of Donetsk Region

The «constitution» of the «DNR» states that only courts can administer justice, while the so-called «supreme court» also has the right of legislative initiative.

Meanwhile, the «fundamental law» of the so-called republic does not set out the procedure for forming courts, appointing judges, administering justice, and guaranteeing the immunity and impartiality of judges. The idea was that all of these procedures had to be laid down in laws that can be passed, amended or revoked much easier than the constitution.

A number of resolutions governing the creation of the judicial system were passed immediately after the adoption of the «constitution». One of them was the resolution **On Approval of the Regulation Governing the Military Courts of the DNR** dated August 17, 2014.

This piece of legislation governs the formation of military courts tasked with fighting crime in territories under martial law and in areas with ongoing warfare. It stipulates that military field courts shall be formed by the «council of ministers» at garrisons, military units, and so forth and shall have at least five judges. In addition to judges, chiefs of garrisons and military units shall appoint jurymen from among servicemen of the «armed forces». Such courts are courts of first instance and the «military tribunal» is a court of second instance and so-called «supervisory instance». Cases are examined by one judge and two jurymen or by three judges if so requested via the defendant's motion. The «tribunal» examines cases by a panel of three judges. Servicemen who are jurymen should not have a vested interest in the resolution of the case.

Such courts have jurisdiction over an indeterminate range of crimes and offenses in accordance with the «law» (in addition to such crimes as contempt of the military authorities, high treason, murder, burglary, and so forth). Notably, not just crimes but also «other offenses». Their jurisdiction also applies to crimes committed by servicemen.

Two resolutions **On the Creation of the Judicial System** (No. 40-1 and No. 40-2) were passed on **October 22, 2014.**

The first resolution states that the judicial system of the «DNR» consists of the «supreme court», municipal and district trial courts, military and arbitration courts. From this point onwards, the law prohibited the activity of Ukrainian judicial authorities and the territorial headquarters of the state judicial administration of Ukraine in Donetsk Region (as of early September, all Ukrainian courts stopped working in the occupied territories, and the judges were relocating). All facilities and inventory of the judicial system of Ukraine and the territorial headquarters of the state judicial administration of Ukraine came under the control of the «supreme court». Leaders of Ukrainian judicial authorities were expected to show up at the «supreme court» with information about Ukrainian judges wishing to work in the territory of the so-called republic.

The second resolution enacted an interim regulation on the judicial system of the «DNR». The regulation was in effect until the passage of the «law» **On the Judicial System.** According to this piece of legislation, the judicial system consists of the «supreme court», trial courts, and specialized courts in accordance with the «constitution» of the «DNR». At the same time, the «constitution» does not provide for the structure of judicial authorities. Moreover, according to the resolution, judges were appointed by an order of the «head» of the «republic». The latter also had the powers to suspend the presiding judge of the «supreme court». No competitive selection process was instituted, meaning that the appointment of judges in this matter lays the groundwork for violations of the principles of independence and impartiality of judges. The powers of the «head» with respect to the «presiding judge of the supreme court» are too discretionary. Moreover, the resolution failed to specify the term of office of the judges.

The resolution **On the Creation of the Judicial System** also stipulated that the «supreme court» was the highest judicial authority of the «DNR». It consisted of three chambers (civil, criminal, and arbitration) and a military tribunal with the rights of a chamber.

The presiding judge of the «supreme court» has broad powers. He is tasked with organizing the proceedings of the «supreme court» and other courts of the «judicial system», can preside over any case referred to a chamber of the court as well as requisition any case from any court in the «DNR» and hand down his own protest in this case. This is a clear violation of the principles of independence of courts as well as principles of fairness and impartiality, especially considering the fact that the «head» of the «republic» appoints this judge and can dismiss him or her at any time.

«Local courts» were also formed in the occupied territory of Donetsk Region based on the territorial structure of the judicial system of Ukraine, which operated in the self-proclaimed republics until November 2014. Trial courts are district, municipal, and interdistrict courts. Their proceedings are managed by the «presiding judge» of the relevant court, who is appointed by the presiding judge of the «supreme court».

In this way, the «head» of the «DNR» wields influence over the entire judicial system.

The «supreme court» began operating in Donetsk in January 2015. This very court examined all politically-motivated cases against those accused of «high treason», «espionage», «terrorism or sabotage». However, such cases were few in number prior to 2018 (people who were handed over to Ukraine during exchanges could be released without so-called court verdicts), and any existing cases were examined by «local courts». The so-called appeals chamber began operating later on, examining «sabotage» and «espionage» cases. The law **On the Supreme Court of the DNR** was passed only **on January 15, 2020.**

Eduard Yakubovskiy, a Russian citizen, became the first presiding judge of the «supreme court». In 2011-2012, he served as senior investigator and forensics specialist at the methods department of the forensic methods directorate of the Main Forensics Directorate of the Investigative Committee of the Russian Federation. In April 2018, the Appellate Court of Donetsk Region sentenced Yakubovskiy *in absentia* to 12 years behind bars. «Under Yakubovskiy, the so-called supreme court handed down a number of unlawful verdicts that sentenced people even to the death penalty. One of those convicted is a fighter (Ukrainian ser-

viceman) who had been taken prisoner by representatives of the DNR and subsequently sentenced for espionage in favor of Ukraine to a 30-year prior term at a maximum security prison,» reads the announcement from the Donetsk Region Prosecutor's Office.[5]

The laws **On the Status of Judges and On the Judicial System of the DNR** were passed **in August 2018.** The latter piece of legislation took effect on January 1, 2019. Under this «law», judicial power is exercised by judges and jurymen; however, the activities of the latter are not regulated, which compromises the independence of judges.

We would like to comment on the discriminatory provisions of the law concerning the language issue. The Russian language is identified as the language to be used exclusively for administration of justice (Art. 10 of the *Law On the Judicial System*). At the same time, the law does not guarantee the defendant's right to communicate in their native language during the trial (apart from mentioning the right to an interpreter). This gives rise to language-based discrimination.

The «constitution» previously stated that Ukrainian and Russian were official languages, but in 2020 Article 10 of the «fundamental law» was amended to read that Russian is the official language exclusively. This underscores the discriminatory subtext.

TO SUM UP, THE «JUDICIAL SYSTEM» OF THE «DNR» CONSISTS OF THE «SUPREME COURT», TWO SPECIALIZED COURTS (THE «ARBITRATION COURT» AND THE «MILITARY FIELD COURT») AND 15 TRIAL COURTS.

The «supreme court» has 71 judges and structurally comprises the plenum, the presidium, the appeals chamber, court chambers on administrative, civil, criminal, and arbitration cases, the military chamber, and the disciplinary panel. For a long time, the appeals chamber formed within the «supreme court» (which was expected to exercise the powers of the appellate court, which had to be formed by January 1, 2022) presented a problem for the independence of judges (clauses 4-5 of the transitional provisions of said law). In other words, the «supreme court» conducted by appellate and cassation proceedings while also serving as the court of first instance in the relevant cases. «Judges» of this chamber were appointed by the «supreme court plenum» from among judges of that court as advised by the «presiding judge» of this court (clauses 6-8 of the transitional provisions). The «plenum» itself consists of the «presiding judge» of this court and his deputies. The fact that the «supreme court» accumulates such a large number of cases and the procedure by which the cases are assigned for examination point to violations of the principles of independence within the judicial system itself.

3.3. «Judicial» Practice in the Occupied Territories of Luhansk Region

Creation of the «judicial system» of the «LNR» began in June 2014. **On September 5, 2014,** the «people's council» of the «LNR» passed the **«law» On Military Courts of the LNR.** It expired **on April 30, 2015** with the passage of another **«law» On the Judicial System,** according to which the system of courts in the «LNR» consists of the supreme, arbitration, and military courts as well as district and magistrate courts (trial courts). The law guarantees that extraordinary courts or courts that are not provided for by law cannot be formed (Art. 4).

No courts other than military courts were formed before April 2015. The **«law» On the Formation of Courts of the LNR** was passed on April 30, 2015, providing for the formation of the «supreme» and «arbitration» courts, 18 trial «courts» (one of them a military court). The law set forth the principle of territorial jurisdiction over cases and provided for the funding of courts out of the state budget.

Just like in the «DNR», the «supreme court» of the LNR simultaneously acts as the court of first instance, the cassation court, and the constitutional court. It comprises the «plenum», «presidium», «appellate panel», «judicial panel on cases involving servicemen», and «judicial panels on administrative, civil, economic, and criminal cases».

---

[5] «The Russian citizen presiding over the so-called supreme court of the 'DNR' has been sentenced to 12 years in prison»: www.facebook.com/photo.php?fbid=2270129566547490&set=a.153918036297575 1.1073741827.1000065140538 52&type=3&theater

The **«law» On the Status of Judges** was passed **on May 22, 2015,** which stipulates that judicial power in the «LNR» is vested only in judges and representatives of the people. Judges are independent and obey only the «constitution» and do not report to anyone. Contempt of the court or failure to comply with court orders entail liability (Art. 1.).

According to the **«law» On the Status of Judges,** a person may be appointed a judge if he or she: has a higher legal education with the degree of specialist or higher, is a citizen of the «LNR» (a citizen of Ukraine may be appointed a judge, and Russian citizenship also does not preclude one from getting appointed as a judge (Art. 28(5)), has no prior criminal record or where the criminal proceeding against him or her was discontinued due to mitigating circumstances, and is not a suspect or defendant facing criminal charges, and has also attained the appropriate age and seniority. The law also states that where the nominee is being persecuted by Ukraine for political reasons, this shall not preclude him or her from an appointment as a judge (Art. 4(3), Part 1(2) of Art. 18). Under the conditions of an armed conflict, this provision allows people who committed criminal offenses to apply for the position of a judge, which is at odds with the high standing expected of a judge.

«Judges of trial courts» and «arbitration courts» are appointed by the «head of the LNR» as advised by the «presiding judge of the supreme court», and judges of the «supreme court» are appointed by the «people's council of the LNR» with the consent of the «head of the LNR», also as advised by «presiding judge of the supreme court». The «head the 'LNR' may single-handedly reject a person's nomination for the position of a judge (Parts 1-3 of Art. 7). The foregoing prompts the conclusion that the «head of the LNR» has a special influence on the appointment of any judge, since no appointment can happen without his decision. Likewise, the «presiding judge of the supreme court» exerts influence over the appointment of judges across the entire judicial system, since no judge can be appointed without his nomination. Since the «presiding judge of the supreme court» and his deputies get appointed by the «head of the LNR», while the «presiding judges» of other courts and their deputies get appointed by the «head of the LNR» as advised by the «presiding judge of the supreme court» (Parts 1-5 of Art. 8), the «head of the LNR» exerts unlimited influence on judges, which undermines the principle of division of branches of power and compromises the independence of the judicial branch of power (Articles 7-8).

The first «judges» in the «LNR» were appointed in late August 2015. On October 1, 2015, «LNR» leader Ihor Plotnytskyi issued an order appointing judges of the military court of the «republic» as well as a number of municipal and district courts for a 1-year term. The order also approved the composition of the «military court», appointed presiding judges, deputies and «judges» in 14 cities and districts of Luhansk Region under occupation.

The **«law» On the Supreme Court of the LNR** was passed **on May 29, 2015.** The «supreme court» began operating in Luhansk in October 2018.

«Local courts» in the LNR operated on the basis of the territorial structure of the judicial system of Ukraine. Before these systems were put in place, illegal militia groups staged «military tribunals» or «people's courts» to hold show trials. These «judicial proceedings» resulted in arbitrary or extrajudicial executions.

3.4. Under the Threat of the Death Penalty

Since 2014, representatives of illegal militia groups in the ORDLO are able to impose the death penalty on Ukrainian citizens according to procedures instituted by them. Back in 2014, so-called «DNR» defense minister Igor Girkin instituted military field courts in some districts of Donetsk Regions, which were authorized to award the death penalty.

Despite the proclamation of the right to life and judicial examination in the «constitution», the Office of the United Nations High Commissioner for Human Rights reported in June 2014 cases of summary executions carried out by representatives of illegal militia groups of the self-proclaimed «DNR». Facts of extrajudicial executions of Ukrainian servicemen are common knowledge.

> *«Since the [military] tribunal consisted of commanders, and when active warfare began they could not be pulled back from the positions, of course I also issued execution orders,»*

Girkin made this admission in an interview with the GlavTema Narod TV channel in May 2019. As he put it, he applied such orders

to those who committed «serious crimes».

> *«We killed a few Ukrainian spies and saboteurs and a few criminals who committed the worst war crimes from among the rebels,»* he added.

The «tribunals» had jurisdiction over such cases as disobeying the commander's order, murder, high treason, espionage, sabotage, deliberate destruction of property, looting, armed robbery, burglary, embezzlement or damage to military property, avoidance of military draft or desertion.

In November 2014, military courts were instituted in the occupied territory of Donetsk Region.

> *«Military field courts are formed at garrisons, formations and military units and consist of at least 5 judges, the secretary of the court, and the court reporter, with one of the judges appointed as the presiding judge of the military field court. It is strictly prohibited to form military courts outside of the system of military courts of the DNR,»* gazeta.ua reported, citing the so-called «DNR» press center.

> *«Each case in which the defendant is sentenced to death (execution by firing squad) is immediately reported by the military field court to the presiding judge of the military tribunal of the DNR and the Prosecutor General via an official written notice, who in turn must immediately launch an inquiry to determine whether the verdict is lawful and justified,»* the announcement read.

In February 2016, the newly formed «supreme court» in Donetsk handed down the first death sentence, which was reported by the Russian media. The verdict was issued by Liudmyla Strateychuk, acting presiding judge of the «military tribunal» within this «supreme court» (until the fall of 2014 she worked at the Court of Appeal of Donetsk Region and is named as a defendant in the criminal case involving high treason and involvement in the creation of a terrorist organization, which was initiated by the Ukrainian law enforcement[6]). She commented on her decision in 2016 thusly:

> *«So far one such verdict has been handed down. There are cases being examined, which also merit the death penalty. These are homicide and espionage cases. 46 more cases are being examined».*

In its report titled *Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine, April 2014 – April 2020,* the Office of the United Nations High Commissioner for Human Rights confirmed two known cases in which the «court» of the so-called «DNR» awarded the death penalty.

According to Radio Liberty[7], in the summer of 2014 the «military tribunals» sentenced to execution at least three local residents: Oleksiy Pichko, Dmytro Slavov, and Mykola Lukyanov. The hearing transcript reads that the exceptional penalty—execution by firing squad—is used pursuant to the order of the presidium of the Supreme Council of the USSR dated June 22, 1941 On Martial Law, i.e. a document dating back to WWII.

3.5. «Judicial Examinations» Based on Examples from Testimony by Former Hostages

The judicial system and specifically the judges of the quasi republics who assumed the functions of the judicial power are dependent on the occupation authorities. Considering the judgment practices, organizational structure and subordination of courts in the occupied territories, such courts are incapable of observing the principles of justice, legality, and legal certainty; they are not independent and impartial. They are incapable of ensuring the adversarial nature of judicial proceedings.

According to former hostages, **court hearings in the «republics» usually happened behind closed doors.** Public audiences were not allowed. Relatives of defendants could learn about the particulars of judicial proceedings only if they were sum-

[6] «An indictment against a judge of the so-called supreme court of the terrorist organization DNR, who handed down death sentences against Ukrainians, has been sent to court in Donetsk Region»: don.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=203200

[7] «Executioners of Slovyansk. Identities of Those Who Ordered Executions in Slovyansk in 2014 Have Been Revealed» – Radio Liberty, June 2020: www.svoboda.org/a/30743233.html

moned to testify as witnesses. Before 2017, in some cases representatives of the UN human rights monitoring mission managed to attend court hearings. Former hostage Halyna Hayova testified about this, among other things.

> *«My children managed to get UN representatives to attend the announcement of the verdict and videotape the proceedings. The military tribunal began hearing my case on July 19, 2017. And on November 13, 2017, I was sentenced to 10 years behind bars for 'espionage in favor of Ukraine'.»*

The «judges» justified «hearings» behind closed doors by the need to protect the «state secret». This applied to all politically motivated cases.

> *«The public, journalists, representatives of international organizations, missions working in Donetsk at the time (2018) (OSCE, UN human rights mission, International Committee of the Red Cross), relatives and friends were not allowed to attend. There were only the panel of 'judges', the prosecution team ('prosecutors'), we the defendants, our 'attorneys', the convoy, and the court reporter. Sometimes they would allow local and Russian journalists to attend the hearing, but they merely recorded a few shots at the beginning or towards the end of the hearing for some coverage,»* says former hostage Denys Koval.

«Judicial examination» of criminal cases behind closed doors without a proper justification is a violation of the right to a public judicial examination. Even though international human rights standards permit the court to bar the public from the hearing, the practice of holding the entire judicial examination behind closed doors without justification is at odds with the requirements of this exception to the general principle of openness of judicial examination[8].

Another former hostage, Maryna Chuykova, says that the court hearing in which she received her verdict lasted for 20 minutes. Prior to that, while she stayed at the pretrial detention center for a year, she was not summoned anywhere and no investigating activities were conducted with her participation.

> *«One day they came over and said the names of those who had to go. We didn't even know where they were taking us. There were ten of us. A plain-clothed woman wearing an ordinary dress, Liudmyla Stratiychuk, came out to meet us. She said she was a judge and told us that the trial would take place under an accelerated formal procedure without observance of laws and rules,»* Chuykova says.

The «trial» happened in one day, and each defendant was given about twenty minutes, according to the woman.

> *«The men came out first. Their sentences were horrible: 12, 14, 15, 18 years. They also sentenced me to 11 years. They did not allow me to speak and went straight to reading the verdict. But prior to that the 'investigator' told me: 'No matter how many years you get, even 25 years, do not shout "Glory to Ukraine!", do not swear, accept it and be quiet',»* she said.

Moreover, the judges did not react to the inmates' complaints about torture to which they were subjected after their arrest.

> *«During the 'court hearing' conducted by 'judge' Strateychuk with the participation of 'attorney' Strelenko and 'prosecutor' Tsymmer at the 'supreme court', I persistently asked to see evidence that would back up the charges against me and also complained that I was tortured at the Insulation [detention center] and the ministry of state security of DNR in order to extract a confession out of me. 'Judge' Strateychuk replied: «I heard you. I will relay your request to the prosecutor's office,»* former hostage Oleksandr Tymofeyev recalls.

He was sentenced to 14 years behind bars during the fifth hearing.

> *«It was done through video conference. I was at the pretrial detention center in front of a television set, and she was alone in the courtroom. Neither the so-called 'prosecutor' nor the so-called 'defense attorney' were around».*

Former civilian hostage Larysa B. says in her interview with the MIHR that she was brought to the «court» only once.

---

[8] Thematic report of the United Nations High Commissioner for Human Rights titled Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine, April 2014 – April 2020, paras. 131, 134: www.ohchr.org/Documents/Countries/UA/Ukraine–admin–justice–conflict–related–cases–ukr.pdf

«They sentenced me immediately in the space of one hearing that lasted 15 minutes. They sentenced me to 11 years in prison for 'espionage' under Article 321 [of the so-called criminal code of the 'DNR']. They let me read the 'verdict' before the trial. Only after reading it I found out what the charges against me were. I said: 'But this is not true. You have not pro-ven my guilt'. They told me: 'What kind of difference does it make to you. Admit your guilt in court. You will get exchanged. The sooner you admit to everything, the sooner you will be set free',» the woman said.

Andriy Kochmuradov, who was detained on October 16, 2017, says that he was 'tried' for one day on August 13, 2019.

«After the introductory hearing, the convoy escorted me out of the courtroom and into the unit for defendants – a separate room in the court building. They brought me back a few minutes later. The hearing of the case on merits and debate of the parties took place. The 'prosecutor' and the 'attorney' addressed the court. The 'judge' retreated to the conference room to reach a 'verdict'. They escorted me out of the courtroom again. They brought me back a few minutes later. The 'judge' read out the 'verdict' – 15 years behind bars based on charges of 'espionage'.»

It is worth noting that there is no access to «court decisions» in the territory of the ORDLO: there are no resources that would provide such access. Moreover, even after the «verdict» was handed down, some of the «convicts» did not receive a copy of the decision.

NEWLY OCCUPIED TERRITORIES AND ADOPTION OF RELEVANT PRACTICES IN THEM

After the start of the full-scale invasion by the Russian Federation that began on February 24, 2022, Russia has occupied new territories, specifically those in Kherson, Zaporizhia, and Kharkiv Regions. In those regions, Russia began an accelerated process of «legitimization» of its authorities: appointing leaders, forming quasi law enforcement agencies, opening Russian passport issuance offices, and preparing for pseudo-referenda on the admission of these regions into the Russian Federation similar to those they staged in the ORDLO in 2014.

04

4.1. Particularities of Russia's Temporary Control over Kharkiv Region

After **February 24, 2022,** the Russian army began an offensive in Kharkiv Region. Since the early days of the full-scale invasion by the Russian Federation, Vovchansk and Kupyansk, then Balakliya, Izium and other towns and villages in Kharkiv Region were occupied. By early March the Russian military controlled almost a third of the region.

Russia began establishing its authorities in these territories since the start of the occupation.

First, **Russia appointed the «chairman of the temporary civilian administration» of Kharkiv Region.** This role fell to Vitaliy Hanchev, former deputy chief of the Derhachi District Police Precinct, a lieutenant colonel who relocated to Luhansk after 2014 and worked in the LNR police force. On July 8, 2022, Hanchev proclaimed Kharkiv to be an integral part of the Russian territory, and the Russian Federation intended to annex Kharkiv.

Second, **Russia appointed so-called heads of local administrations,** particularly in Izium, Balakliya, Kozacha Lopan, etc. Most of them were former Ukrainian law enforcement officers.

Third, **Russia formed quasi law enforcement authorities: «the directorate of internal affairs of the temporary civilian administration of Kharkiv Region» and «district police directorates».** However, they did not maintain law and order in the occupied territories, but instead were used to detain, hold, and torture Ukrainian civilians suspected of cooperating with the Ukrainian military. According to testimony by former detainees, Russian military personnel and representatives of the quasi formations with their centers in Donetsk and Luhansk were involved in keeping them in custody. Both interrogated the detainees.

Almost all of Kharkiv Region was liberated in September as a result of an AFU offensive. Once the territories were liberated, it became known that the majority of representatives of the occupation administrations either escaped to the other occupied territories or to Russia after leaving traces of numerous war crimes.

The Kharkiv Region Prosecutor's Office is investigating close to 5,000 cases involving crimes committed by the Russian military. Criminal proceedings concern torture, inhumane treatment, abduction of people, burglary, removal of property to the territory of the Russian Federation, and other illegal acts punishable under Art. 438 of the Criminal Code of Ukraine – violations of the laws and customs of war.

For instance, a site where civilians interrogated was discovered in the town of Balakliya, Kharkiv Region. It was located at the local police headquarters. The MIHR discovered signs of torture, such as a broken rubber baton, a running knot that was probably used to choke people, traces of blood on the floor, and bullet holes in the walls. Instructions with the following items were preserved on a small piece of paper: *«Introduce yourself; tell them about the Armed Forces of the Russian Federation and how the AFU is shelling the city»*. Presumably, these are instructions for videotaped interrogations of detainees. In an interview with the MIHR, Ruslan Volobuyev, a local resident subjected to unlawful detention, described the events unfolding in the building of the police directorate thusly:

> *«He hit me with a rubber baton over the head, and the baton broke, but he pulled out a new one. I told him: 'Simply kill me. Why would you torture people like that?' Give me a phone to say goodbye to relatives, and that's all'.»*

The police have documented cases of people disappearing and point out that Ukrainian law enforcers who agreed to collaborate with the occupants are involved in the disappearances.

Viktor Sirenko, father of Artur Sirenko, an abducted native of Balakliya, testified against Oleh Kalayda, chief of the so-called «people's police», who previously worked as one of high-ranking Balakliya police officers. Viktor believes that he might have had a hand in mass abductions that happened in Balakliya. The State Bureau of Investigations detained Kalayda in Kupyansk after the liberation of Balakliya.

After Kharkiv Region was liberated, the police discovered more than 530 corpses, mostly those of civilians.

«The deceased sustained bodily injuries in the form of trauma caused by mine explosions, shrapnel, bullets, and cut and stab wounds. Some of the deceased had their hands tied, bones broken; a few of the deceased had nooses on their necks,» reads a statement issued by the Office of the Prosecutor General of Ukraine.

It is also known that an extensive PR campaign was launched to justify the activities of the occupation administration in Kharkiv Region. In Balakliya, the Russians illegally imprisoned Yevhen Dykan, an employee of the local printing shop. They demanded that he disclose information about the operation of the printing shop so they could start printing leaflets. Newspapers titled «Kharkov Z» were found in the village of Kozacha Lopan. The Russians most likely brought them from Russia.

4.2. Kherson Region: Detention and Interrogation by Agents of the Federal Security Service

On the first day of the large-scale invasion on February 24, Ukraine lost control over a number of population centers in Kherson Region, specifically the resort town of Henichesk and the strategically important city of Nova Kakhovka. The Russian army broke into the regional center, Kherson, on March 1. It was the only regional center to be occupied by the Russians since the start of this phase of the war. **On March 16, the occupants in Kherson announced the creation of the «Salvation Committee for Peace and Order»,** which was manned by pro-Russian politicians and collaborationists.

Efforts began to create an illusion of Russian jurisdiction getting established in the region: on April 26 the occupants **presented «the chairman of the Kherson Regional Administration» and the «chairman of the Kherson City Administration».**

Volodymyr Saldo (a citizen of Ukraine, mayor of Kherson in 2002-2012) was appointed «chairman of the regional council». The politician has pro-Russian views. He was a member of the Ukrainian Parliament of the 7th convocation on the roster of the Party of the Regions – the political force of ousted former president Viktor Yanukovych.

Russia appointed Oleksandr Kobets, a native of Kherson and former employee of the Security Service of Ukraine, as «Chairman of the Kherson City Administration». Kobets resided in Kyiv prior to 2022.

Since the first days of the occupation, **human resources (Russian citizens) were bused into the city to begin forming their own «police force».** It was headed by Volodymyr Lipandin[9], former chief of the Cherkasy Region Headquarters of the Ministry of Internal Affairs, who organized the beatings against local activists and attacks by paid henchmen during the Revolution of Dignity (2013-2014). On February 24, 2014, Lipandin was dismissed from the Ministry of Internal Affairs and he absconded to Russia-occupied Crimea where he got Russian citizenship. In Crimea, Lipandin started his own security company whose employees were regularly featured in local crime reports. Lipandin has been wanted by the Security Service of Ukraine since 2014; he faces charges under Part 2 of Art. 365 of the CCU (abuse of power or office). After his «appointment», Lipandin began forming the «police force» partly from collaborationists (police officers who betrayed Ukraine) and former law enforces who were retired at the time of the occupation. He announced that all «law enforcers» who agreed to cooperate with the occupation authorities in Kherson Region were required to submit to a lie detector test for potential ties with Ukraine.

Just like in Donetsk and Luhansk Regions, the Russians entrusted citizens of Ukraine with running Kherson Region. The Russians were present in the occupied territories since the beginning of the occupation. For instance, the former detainees claim to have been interrogated by officers of the Federal Security Service and report a «temporary directorate of the Ministry of Internal Affairs of Russia» operating in the city. Also, when the Antonivsky Bridge was shelled on August 8 (the bridge across the Dnipro connecting Kherson with the left-bank part of the region), a video circulated on the Internet showed officers of the RF Investigative Committee assessing the damage[10].

---

[9] www.chesno.org/traitor/571

[10] The video is available at www.youtube.com/watch?v=sUi_bxVhNfs&t=16s

It is also worth mentioning the multiple **attempts by the occupation authorities to coerce incumbent heads of administrations** in Kherson Region to collaborate. Those who refused were abducted. Dmytro Liakhno, head the Hornostayivka United Territorial Community in Kherson Region, remained in his community for the duration of the occupation. For the locals he was arguably the only representative of the legitimate authorities on whom they could rely for assistance. The Ukrainian flag was flying on the Hornostayivka administration building throughout the occupation. Employees of the village council continued working under Liakhno's leadership under Ukrainian legislation. For this, the united territorial community leader received numerous threats from the occupation forces. On August 3, the Russian military abducted Dmytro Liakhno from his home, beat him up cruelly, and took him to an undisclosed destination.

> *«They would come and try to persuade him to collaborate with them. He refused: 'Guys, we have Ukrainian flags flying in Hornostayivka and other villages because that's what the people want. This is Ukraine, I am Ukrainian, and here all people are pro-Ukrainian'. And they replied to him: 'People will come to you and you will be cooperative',»*

Dmytro's wife, Olena Liakhno, tells the MIHR. She assumes that her husband got abducted by the Russian intelligence services.

The occupants appointed collaborationist Oleksandr Yakymenko as overseer of intelligence services in Kherson Region. In 2013-2014, he headed the Security Service of Ukraine and directed the attempts to forcibly suppress the Euromaidan revolution (2013-2014). After 2014, Yakymenko left the territory of Ukraine and resided in Russia in recent years.

Sergey Kirienko, first deputy chief of staff of Russian President Vladimir Putin, visited Kherson on more than one occasion. The mass media dubbed him the «Kremlin underboss» overseeing the occupied territories of Ukraine[11].

In July, Volodymyr Saldo issued an «order» On Liability for Certain Offenses that Jeopardize Public Order and Public Safety, **which instituted a tighter police regime in the region.** The occupation authorities announced that

THOSE DISOBEYING THEIR «ORDERS» WOULD BE FORCIBLY DISPLACED FROM THE REGION.

Just like they did in 2014 in Donetsk and Luhansk Regions, representatives of the Russian Federation in Kherson Region began practicing unlawful arrests of civilians. Ukrainian law enforcers document almost daily facts of people vanishing in Kherson Region. People get abducted, tortured, forced to cooperate with collaborationists, forced to appear in propaganda videos for Russian television, and so forth.

During the MIHR field mission to Kherson Region, witnesses said that civilians with bags over their heads were regularly brought to the pretrial detention center at 3 Teploenerhetykiv Street in Kherson. We also have numerous testimonies about people getting tortured at that facility. Evidence that people were held captive has been preserved there.

Abductions of active citizens were common in Kherson Region. For instance, the MIHR documented the abduction of Kherson's former mayor Volodymyr Mykolayenko[12]. He lived under occupation and regularly received offers to collaborate with Russians and threats for his refusal to collaborate. Local collaborationist Kyrylo Stremousov was tasked with recruiting Mykolayenko to side with Russia. Before the full-scale Russian invasion, he positioned himself as an opposition journalist and blogger, but did not conceal his support for the Russian Federation, according to locals. In early April, Stremousov called Volodymyr Mykolayenko and invited him to a meeting. Mykolayenko's wife Maryna partly overhead their conversation:

> *«Stremousov asked something along the lines of: 'Why don't you wish to talk to me?' My husband said: 'Because I am Ukrainian, and what you are doing is inadmissible'. Stremousov replied: 'Well, then it's going to be the basement'. And my husband told him: 'I choose the basement over dealing with you'.»*

The MIHR learned about the circumstances of the abduction of Kherson-based blogger and volunteer Iryna Horobtsova from her friend, Kateryna. This happened on May 13, 2022.

---

[11] «The Kremlin Outs the New Overseer of the Occupied Territories» – Radio Freedom, June, 2022
www.radiosvoboda.org/a/kurator-donetska-russia/31889577.html

[12] «Three Months Since the Abduction of Kherson's Former Mayor Volodymyr Mykolayenko: What Is Known to Date» – MIHR, July 2022.

«On the day when she was detained, two military vehicles marked with the letter 'Z', each carrying 5-6 armed Russian military men in balaclavas, arrived at Iryna's address. They kicked down the door, broke into the apartment and began a search. They told her parents that they would bring Iryna back in two hours or in the evening, after questioning. However, we know nothing about her to this day,» Kateryna says.

Horobtsova's father later received a reply from the Russian Ministry of Defense saying that Iryna was in custody in Simferopol, that she «resisted the special military operation», and that «appropriate measures» would be applied to her.

We learned from the liberated citizens that interrogations are carried out by Russian citizens, specifically officers of the Federal Security Service of the Russian Federation (RF FSS).

According to local residents, RF FSS officers occupied the premises of the National Police of Ukraine and the Security Service of Ukraine in Kherson. One of the National Police Buildings and the SSU building were booby-trapped by the retreating Russian military. Ukrainian mine sweepers were forced to carry out a detonation of explosives on the premises, which may have destroyed evidence of the occupants activities in Kherson Region.

Anton Hladkyi, who was detained in Kherson on March 27 and who spent 22 days in detention, says that he was taken to the building of the Kherson Regional Police Headquarters on the day of his arrest.

«We were interrogated by [representatives] of the Federal Security Service. They mostly asked us about our motivation and why we disliked Russia so much. They questioned us about the circumstances of the arrest, whether or not we belong to the AFU, whether we have relatives in Russia, about our attitude towards Bandera and the president. The standard interrogation procedure happened thusly: hands handcuffed behind back, feet tied together, a bag over the head. Psychological pressure. Beatings are constant. A telephony guy comes with a switch and tortures you with current,» he says.

Notably, these arrests happened without the announcement of suspicion or explanation of reasons. Detainees usually don't know the identities of those who detained them: they conceal their names and faces. Taking the matter to the court was out of the question: the courts stopped working in the occupied territories of Kherson Region. Meanwhile, the detainees were often held in custody in penitentiary institutions of the State Criminal Correctional Service of Ukraine, which found themselves under the occupation. In other words, they were held not only at pretrial detention centers but also at correctional facilities. They are also transported to the territory of occupied Crimea.

These examples show that suspects were denied the right to revision of the grounds for detention and the right to a fair judicial examination.

IN SITUATIONS LIKE THESE, THE PERSON UNDER DETENTION OR ARREST IS — AT THE VERY LEAST— DENIED THE RIGHTS TO:

- be informed immediately and in a language understandable to them about the nature and causes of the charges made against them;
- be afforded the time and opportunity to prepare their defense;
- defend themselves in person or use the assistance of a defense attorney of their choice;
- question witnesses.

International law provides for the right to each person to freedom and personal inviolability. Nobody may be deprived of their freedom except in the cases and under the procedure prescribed by law (see Art. 5 of the European Convention on Human Rights). In the situations described, legal procedures were not observed because the detainees were arbitrarily deprived of the right to liberty without an effective opportunity to appeal the arrest.

4.3. Pseudo-referenda: an Attempt at Establishing Permanent Control

From September 23 to 27, 2022, the occupants in Kherson, Zaporizhia, Donetsk and Luhansk Regions of Ukraine held a **pseudo referendum on the admission of the newly occupied regions into the Russian Federation.**

The Russians staged a similar «referendum» on the status of Crimea and its admission into the Russian Federation on the peninsula in March 2014. Meanwhile, the pseudo referenda on the status of the «Donetsk People's Republic» and the «Luhansk People's Republic» held on May 11, 2014 in some population centers of Donetsk and Luhansk Regions asked voters to answer the question whether or not they supported the «independent statehood of the republics». Incidentally, Ukrainian citizen Roman Lyahin, the then chairman of the «central electoral commission» of the «DNR», was detained by the Ukrainian police in 2019 on charges of high treason and encroachment against the country's territorial integrity and was subsequently also charged with violations of the laws and customs of war. The case is currently in court.

It is noteworthy that **international law does not provide for any legal opportunity to hold and justify similar pseudo-referenda.** Moreover, in terms of representativeness of public opinion these pseudo-referenda are not informative because an external observer is unable to assess the expression of will by the voters as claimed by the occupants (or the allegations that they participated in this process in the first place), since the rules according to which it was held were not transparent, and the voting (even if anybody participated) exhibited the nature of forcible participation – a condition of survival under the threat of arbitrary persecution. For this reason, we also cannot trust the tally of the votes or consider it representative. Much like in 2014, in 2022 a small number of residents of the occupied territories participated in the pseudo-referendum, and the effect of mass attendance was achieved by opening a limited number of so-called polling stations (for example, in Donetsk only a few hundred polling stations opened in Donetsk out of more than 2,000 polling stations that normally worked during elections).

ACCORDING TO OFFICIAL REPORTS OF THE UKRAINIAN AUTHORITIES, MORE THAN 50% OF RESIDENTS EVACUATED FROM SOME OF THE TERRITORIES SINCE THE START OF THE FULL-SCALE INVASION BY THE RUSSIAN FEDERATION.

While in 2014, the occupants arranged the voting at few «polling stations», in 2022 they formed special armed details that included representatives of polling committees and Russian servicemen who went door to door and forced people to take voting ballots. Witnesses claim that few people were able to refuse: men with assault rifles demanded that they vote right on the spot while they watched. Those who intended to vote against the decision were added to separate lists or threatened to be summoned to the commandant's office or so-called «ministry of state security».

To increase the turnout, minors (children aged 13 to 17) were involved in the fake referendum in Donetsk Region, while solitary residents in apartment buildings were forced to vote for missing neighbors. In Kherson Region, there were known cases of people getting bused in from occupied Crimea en masse to «vote» in the referendum. In Enerhodar, Zaporizhia Region, the occupants threatened people with mobilization for refusal to vote. «Votes» of dead people were also counted to improve the numbers. In all regions, the occupants banned people (and especially men aged 18 to 35) from leaving. The MIHR learned about all of this from residents of the occupied territories.

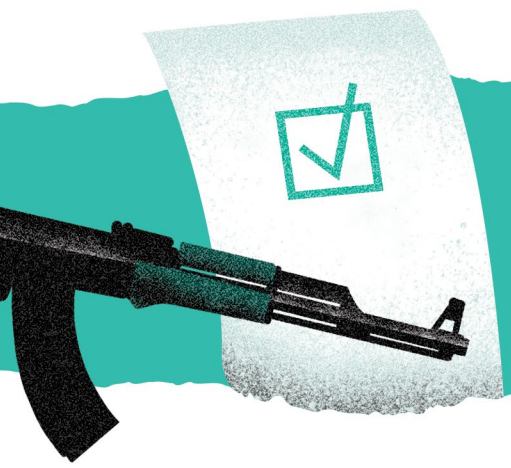
Much like in 2014, the fake referenda of 2022 took place in contravention of the Constitution of Ukraine. It should be noted that martial law was instituted in the territory of Ukraine in February 2022 in the wake of the full-scale invasion by the Russian Federation. The constitution prohibits holding local or nationwide referenda under martial law conditions. Ukrainian legislation also prohibits holding referenda on issues proposing to liquidate the independence of Ukraine, encroach on state sovereignty or territorial integrity of Ukraine, or create a threat to national secu-

rity of Ukraine. It is also not possible to hold such a referendum under international law, including provisions of armed conflict laws applicable in time of war.

On September 27, 2022, the occupants announced a 90% turnout and claimed that 87-99% of the voters supported «admission into the Russian Federation». These results were not recognized by the Ukrainian authorities and the international community.

Meanwhile, on September 30, 2022 Russia announced the annexation of the occupied territories of Ukraine based on the results of the pseudo-referenda. Russian President Vladimir Putin signed «agreements on the admission into the Russian Federation» of new entities – occupied Ukrainian territories, and mores specifically Donetsk, Luhansk, Kherson, and Zaporizhia Regions. In 2014, Russia did not dare take such steps with respect to the occupied territories of Donetsk and Luhansk Regions.

Overall, international law does not prohibit polling the population of a certain territory or administrative unit within a state. However, the matter of determining whether or not it belongs to this state should be governed by law passed by a relevant authority. This voting instrument can apply to the nation as a whole and not to a part of one nation. Meanwhile, in the case of the pseudo-referenda they were used to conceal unlawful actions, particularly occupation and attempt by one state to annex the territory of another.



THE RESULTS OF THE QUASI REFERENDA IN WHICH SOME OF THE RESIDENTS OF DONETSK, LUHANSK, ZAPORIZHIA, AND KHERSON REGIONS VOTED CANNOT BE CONSIDERED REPRESENTATIVE EVEN ACCORDING TO MINIMAL STANDARDS, EVEN IF LEGAL GROUNDS FOR SUCH REFERENDA EXISTED.

First, while holding a referendum like this, none of the concerned parties to this process may resort to the use of force.

Second, the voting process must conform to the universally recognized international standards for the expression of will during elections and referenda. They include: free participation in the referendum, equal voting rights, secret and personal voting, publicity and transparency of the process, broad public discussion of the substance and goals of the referendum, which requires the involvement of all parties, the ability to provide media coverage of the opposing positions, etc.

Obviously, under the conditions of total Russian control over the occupied territories and active warfare in these territories, it was impossible to create the appropriate conditions. Moreover, before the Russian occupation the population of these territories never expressed a desire to separate from Ukraine, which clearly proves that they were forced to vote in the «pseudo the referenda» and also speaks to their fake nature.

CONCLUSIONS

The study findings show that systemic human rights violations have been happening in Russia-occupied territories of Ukraine since 2014. They include:

ARBITRARY DEPRIVATION OF LIBERTY FOR AN INDETERMINATE PERIOD

The «judicial system» instituted by the occupation authorities does not provide for the obligatory procedure of revision of the lawfulness of detention according to common law rules of habeas corpus, which enables the police authorities to arbitrarily hold people in detention facilities without a judicial examination for years. Defendants have almost no chances of securing a release using the legal assistance of an «attorney».

DENIAL OF THE RIGHT TO DEFENSE AND EXTERNAL COMMUNICATION

Defendants are unable to choose an attorney in politically motivated cases, while the attorneys appointed for them perform poorly. Defendants are unable to maintain communication with relatives: at certain stages of the detention process, they are banded from sending or receiving parcels or visitation.

DENIAL OF THE RIGHT TO A FAIR TRIAL

The judicial system of the quasi republics is dependent on the occupation authorities. Considering the judgment practices, organizational structure and subordination of courts in the occupied territories, such courts are incapable of observing the principles of justice, legality, and legal certainty; they are not independent and impartial and are incapable of ensuring the adversarial nature of judicial proceedings.

Moreover, the death penalty is allowed in the occupied territories of Donetsk and Luhansk Regions controlled by the RF.

Study findings indicate that the authorities formed by the occupation administration use the precautionary restrictions available under criminal procedure not for investigation of crimes but for political persecution.

Such practices are banned by the Convention for the Protection of Human Rights and Fundamental Freedoms and universally recognized international standards governing the investigation of criminal offenses, including those committed in time of war. Such investigations should be carried out in a manner respectful for the right to a fair and regular trial. Violation of the right to a fair trial constitutes a war crime.

The foregoing cases demonstrate that residents of the occupied territories are completely defenseless. Examples of detention of civilians indicate that a person who has been arrested is unable to use judicial procedures to verify the lawfulness of the arrest and grounds for subsequent detention. The person under arrest is held in custody for as long as the prosecutor wants them in custody. We can see that the judicial system in the occupied territories does not exist as an independent institution that could fix the shortcomings of the prosecutorial agencies; this system is so dependent on the occupation authorities that it represents their organic outgrowth.

As a result, without the public attention the detainees are effectively hostages without the right to release unless the occupation authorities choose to grant such a release. It is unknown how many civilians are being held in custody; however, the public learns from those released through exchanges that the occupation authorities are not only unlawfully holding civilians in custody but are also holding them in inhumane conditions and subjecting them to systematic torture. The number of those detained in Russia-occupied territories of Ukraine continues to grow, which signals a systemic practice of political persecution of civilians for any expression of a dissenting opinion.

We believe that this distorted system of legal norms should not remain without attention; the war crimes described in this study are crimes against the international law and order, crimes against civilized mankind, and therefore mankind should defend itself.

RECOMMENDATIONS

For the State of Ukraine:

1 TAKE MEASURES

to detect and document all facts of unlawful arrests in the occupied territories;

2 FORM

a dedicated register of documented cases of unlawful arrests in the occupied territories;

3 EXAMINE

all facts of unlawful arrests in the context of investigations of war crimes as part of criminal proceedings and take measures to hold perpetrators accountable;

4 BRING

national criminal laws and criminal procedure laws into conformity with international laws, particularly by having the President of Ukraine sign Law No. 2689 *On Amendments to Select Legislative Acts of Ukraine Relating to the Implementation of Provisions of International Criminal and Humanitarian Law,* which would improve the quality of national criminal proceedings relating to the armed conflict;

5 AT ALL STAGES ENSURE

quality cooperation with the International Criminal Court (ICC) and facilitate the Court's investigation of all cases of unlawful imprisonment in connection with the Russo-Ukrainian armed conflict, particularly cases of torture and sexual violence;

6 CONTINUE

sending to the ICC high-quality analytical reports on the suspected war crimes and crimes against humanity (such as unlawful imprisonment, torture, inhumane treatment, biological experimentation, forced disappearances, sexual violence);

7 RATIFY

the Rome Statute of the ICC;

8 DRAW

the public's attention to systemic practices of unlawful arrests in the occupied territories: the public attention can mitigate threats if not prevent the arrests;

9 STEP UP

constructive cooperation with the civil society and the professional community, particularly in matters of documenting of suspected grave violations of human rights, war crimes, and crimes against humanity, and reporting such acts to the ICC as long as they fall under ICC jurisdiction. Cooperate with the civil society and professional community in assisting individuals deprived of their liberty as a result of the armed aggression against Ukraine, and their families, as well as in other matters of transitional justice, deoccupation, and reintegration.

For international partners of Ukraine:

01

Impose or step up sanctions and other restrictive measures against individuals complicit in grave violations of human rights, war crimes, and crimes against humanity in the Russo-Ukrainian armed conflict;

02

Step up professional and technical assistance for investigative, prosecutorial, and judicial authorities of Ukraine as they handle suspected grave violations of human rights, war crimes, and crimes against humanity and work with victims of such crimes, cooperate with human rights organizations and assist them;

03

Support the initiation of criminal proceedings in connection with suspected grave human rights violations, war crimes, and crimes against humanity in the Russo-Ukrainian armed conflict, specifically according to the principle of universal jurisdiction.

This publication has been made
within the framework of the Matra Programme
(Embassy of the Kingdom of the Netherlands).

MEDIA INITIATIVE for Human Rights

Media Initiative for Human Rights is a Ukrainian NGO established in September 2016. The goal of the organization is to combine awareness raising, analytics, and advocacy towards detecting and responding to human rights violations.

mipl.org.ua mihr_ua mipl.org.ua mipl.ua

MediaInitiativeForHumanRights +380509945250 +380973900543